
(1974) 06 GUJ CK 0001

In the Gujarat High Court

Case No : Company Petition No. 9 of 1974

In Re: New Asarwa Manufacturing Company Ltd.

Date of Decision : 25-06-1974

Acts Referred:

Companies Act, 1956 — Section 17

Citation : (1975) 45 CompCas 151 : (1975) 16 GLR 553

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Advocate : I.M. Nanavati, for the Appellant; G.B. Desai, for the Respondent

Judgement

B.K. Mehta, J.—This is a petition u/s 17 of the Companies Act, 1956, for confirming alterations of the memorandum of the company annexed to the petition at annexure "B". The petitioner-company was registered under the Companies Act No. VI of 1882 on October 6, 1913, under the name of "Harivallabhadas Mulchand Mills Co. Ltd." as a company limited by shares. The name of the original company was changed to "New Asarwa Manufacturing Company Ltd." from February 15, 1961, and a fresh certificate of incorporation dated the 15th February, 1961, was issued by the Registrar of Companies, Gujarat. The authorised capital of the company is Rs. 35,00,000 divided into 3,164 ordinary shares of Rs. 1,000 each, 2,240 4 1/2% redeemable cumulative 1st preference shares of RS. 100 each, 560 second 4 1/2% redeemable cumulative 2nd preference shares of Rs. 100 each and 560 4 1/2% redeemable cumulative 3rd preference shares of RS. 100 each. All the shares are fully paid up. The objects of the petitioner-company are described in the memorandum of association annexed to the petition as annexure "B". It is more or less a one-object company as can be seen from the objects described in clause 3 of the memorandum. The original memorandum of association of the company is in Gujarati. The said clause 3 when translated into English reads as under :

"A. To purchase from Sheth Chimanlal Girdharlal at Rs. 3 lakhs inclusive of the cost of preparation of documents, stamp, registration, etc., the factory known as "the Hitechhu Spinning and Manufacturing Company Limited" situate at

Ahmedabad together with all its machinery, buildings, etc., which factory was purchased at a court auction by the said Sheth Chimanlal Girdharlal for Rs. 2,75,001 (rupees two lakhs, seventy-five thousand and one only) and to expand the business of weaving cloth, etc., to dispose of useless machinery, that is, to expand the weaving department by replacing and/or adding new machinery for the old machinery for the manufacture of yarn, cloth, etc., and if necessary to start dyeing and printing departments, etc., and all other works which can be operated manually or by steam or by electricity.

B. To purchase or to take on lease the land wheresoever necessary for the purpose of building the factory as mentioned above and for any other work connected therewith.

C. To carry on all or any of the business mentioned hereunder.

To purchase or sell by immediate or future delivery cotton, silk, wool, jute, seeds, etc., from any part of India or from England, America or Egypt, to purchase and gin cotton and to sell or cause to be sold all types of manufactured goods in Ahmedabad or at any other place and to do all work incidental thereto.

D. To amalgamate with any other company if deemed proper by the company to do so."

2. The petitioner-company commenced its business and continued the same till 1972 in which year, the petitioner-company sold its undertakings on April 29, 1972, for a sum of Rs. 40 lakhs only. It appears from the balance-sheet of the company for the year ending 31st December, 1972, that the petitioner-company had received licences to deal in cotton and the directors reported to the shareholders in their report enclosed to the balance-sheet that they had started the said business in cotton. It also appears from the balance-sheet that after making adjustments against the losses of the previous years, there was a total loss of Rs. 20,35,072 at the end of the year. In the balance-sheet of the company for the year ending 31st December, 1973, which has been placed on the record today on behalf of the petitioner-company, it has been observed in the directors' report that during the year the company had done cotton business and employed the funds deposit of scheduled banks. It has been also observed that the manufacturing activities of textiles was continued by getting cloth woven by outside agencies.

3. At the extraordinary general meeting held on April 23, 1974, a special resolution sanctioning the alteration to clause 3 of the memorandum of association was duly passed unanimously. The proposed alterations in the objects clause of the memorandum of association have been annexed at annexure "C" to the petition. The petitioner-company has, therefore, approached this court for sanction to the said alterations u/s 17 of the Companies Act, 1956.

4. For the purpose of the alteration of the objects clause, the petitioner-company has divided the proposed objects into main objects and other incidental objects

as the future objects of its business. The main object of the future business of the petitioner-company is intended as under :

"To acquire and take over from Echem Investment private Limited as a going concern the business of cinema exhibition carried on by the said Echem Investment Private Limited in the name and style of Shital Theatres at Gomtipur Road, Ahmedabad."

5. The other objects of the company are, inter alia, to carry on business as proprietors, managers and renters of cinema, theatres, music halls, concert and dance halls, discotheques and other places of amusement and entertainment of every kind of film producing studios, recording studios and television studios and also to carry on the business of exhibiting cinematograph films and of organising the production, management and performance of plays, dramas, comedies, operas, operettas, burlesques, pantomimes, revues, musical and other pieces, ballets, shows, radio and television entertainments of every kind, and of organising, managing and holding concerts, recording sessions and dances, etc., The petitioner-company incidentally intends to carry on the business as proprietors of restaurants hotels, refreshment and tea rooms, cafes and milk and snack bars and to carry on the business as bakers, confectioneries, tobacconists, farmers, ice manufacturers, etc. The petitioner-company also intends to carry on the business which may be really incidental to their main business of exhibitors, which have been set out in sub-paras. (1) to (12) of para. B to clause 3. The petitioner-company also intends to carry on incidentally the business of spinning and weaving and all other incidental business activities in relation thereto as this happened to be their original business. These activities have been referred to in sub-paras. (14) to (17) of para. B of clause 3. The company also intends to act as financing agency and to carry on all incidental business activities in relation thereto. These activities have been described in sub-paras. (22), (24), (25) and (28) of para. B of clause 3. The company also intends to carry on the general business of land agent and to purchase, grant, lease, exchange, hire or otherwise lands and properties of any tenure or any interest in the same in India and to erect and construct houses, buildings or works of every description of any land of the company. These activities have been enumerated in sub-paras. (31), (37), (38) and (39) of para. B to clause 3. The company also intends to act as an investment company and to carry on all incidental activities thereto. The said activities are described in sub-paras. (44), (45) and (46) of para. B to clause 3. In order to effectuate the main and incidental objects which have been described above, the company wants to have sufficient powers in that behalf and, therefore, in para. C of clause 3 the incidental and ancillary objects have been enumerated in sub-paras. (47) to (56) and (60) to (72) and (78) to (83), (86), (88) and (89).

* * * * 6. The second ground of objection of the Registrar is that the business which the petitioner-company is intending to carry on is entirely a new business, which cannot be said to be incidental or ancillary or even akin or alike to the

existing business of the petitioner-company. It is no doubt true that the main business activities in which the petitioner-company wants now to engage itself is the exhibition of films and all the business activities incidental thereto. However, by sub-paras. (14) to (17) of paragraph B of clause 3 in the proposed amendments the company has also indicated that it would engage itself in the business of manufacturing textiles as well as dealing in cotton and other fibres. The objection of the Registrar that this new business cannot be conveniently or advantageously be combined with the business of the of the company in the existing circumstances is in my opinion misconceived. The new business intended by the petitioner-company having regard to the changed circumstances, namely, that the original undertaking of the petitioner company has been sold away for a sum of Rs. 40 lakhs, whereby the petitioner-company has received such a big amount, can conveniently with its present business of some manufacturing activities as well as its business of dealing in cotton, be put to profitable use by investing the same in some lucrative line. No circumstances have been pointed out by the Registrar nor brought on record by any other affected party that it would not be convenient or advantageous for the petitioner-company to engage itself in the main business of exhibition of films with the existing business of the petitioner-company. It is an accepted position that a large sum of Rs. 40 lakhs is lying with the company which has for temporary purposes been placed in fixed deposit with the scheduled banks. The contention of the petitioner-company that it should be permitted to utilise this large fund in such business which will earn a fair and reasonable return so as to ensure the dividend to the shareholders is perfectly justified. The petitioner-company intends to acquire as a going concern the business of cinema exhibition of M/s. Echem Investment Private Ltd. which is a holding-company and the acquisition of cinema business by the said holding-company would be in the mutual interest of the petitioner-company and the holding-company. It is an established legal position that in deciding as to whether sanction to the alteration of a memorandum should be granted or not, the court should not reject an application *ex facie* merely because the new business is wholly different from the bears no relation to the existing business of the company. All that should be essential and none in mind is that it should be capable of being conveniently and advantageously continued with the existing business and is not destructive of or inconsistent with the existing business (*vide* *Modi Spinning & Weaving Mills Co. Ltd. In re, Juggilal Kamalpat Jute Mills Co. Ltd. v. Registrar of Companies, In re Rajendra Industries (P.) Ltd. and In re New Asiatic Insurance Co. Ltd.*). It is no doubt true that the court may refuse to confirm an alteration unconnected with the existing objects or where the change has altered the basis of the company. But it cannot be said here that the proposed alternations will change the basis of the company or destroy the existing business. As has been stated above, the petitioner-company does not want to abandon its present business activities of manufacturing textiles or to deal in cotton. It wants to put the large fund which is now at its disposal on account of the disposal of the undertaking of the petitioner-company to more purposeful use which will earn reasonable profits for the share-holders and with

that purpose in view, it wants to have as its object the business of exhibition of films and for that purpose to acquire the running business of the holding-company. The other objects which have been classified by the petitioner-company in paragraph B of clause 3 include the present activities of textile manufacturing, dealing in cotton and the business in land and constructional activities. If the petition-company takes over the business of the holding-company, viz., of exhibition of films, it cannot be gainsaid that it will be convenient as well as advantageous to run the new business along with the old. By no stretch of imagination it can be said that the new business will destroy the old one. In these circumstances, therefore, the objection of the Registrar that it would not be convenient or advantageous for the petitioner-company to engage itself in new business along with the present business should be rejected.

7. The third objection of the Registrar that this will deprive the State of its revenue is entirely misconceived and it is to be stated merely for rejecting it. Simply because the petitioner-company could have resorted to an alternative course of action by floating a new company if it can legally do so to alter the objects to achieve the same purpose. I have not been able to appreciate which are the other provisions of the Companies Act which can be impediments in the way of the petitioner-company if it can legally do so to alter the objects to achieve the same purpose. I have not been able to appreciate which are the other provisions of the Companies Act which can be impediments in the way of the petitioner-company in getting sanction from this court for the proposed alterations in their objects. The Registrar of Companies has not pointed out any other provision of the Companies Act which would be a bar to the grant of sanction prayed for by the company.

* * * * Petition allowed and proposed alterations (save and except certain deleted sub-paras.) sanctioned for insertion in the object clause 3.